

United States Senate
WASHINGTON, DC 20510-3905

June 4, 2007

Glenn A. Fine
Inspector General
The Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Dear Inspector General Fine:

I was pleased to read your May 30, 2007 letter to Senators Leahy and Specter regarding the expansion of the investigation into the removals of United States Attorneys being conducted jointly by the Office of the Inspector General (OIG) and the Office of Professional Responsibility (OPR). Exploring to what extent improper considerations went into the hiring decisions at the Department of Justice (DOJ) is vital to understanding, and correcting, the problems that have come to light over the past few months.

There are two additional issues that I believe merit investigation by the OIG.

The first relates to a conversation between Michael Elston, the Chief of Staff to the Deputy Attorney General, and H.E. "Bud" Cummins, the former United States Attorney for the Eastern District of Arkansas. According to a document provided to Congress by Mr. Cummins (see attached), Mr. Elston called Mr. Cummins on February 20, 2007 to issue, in Mr. Cummins's words, a "threat of retaliation" in response to Mr. Cummins and other dismissed U.S. Attorneys publicly discussing the circumstances surrounding their terminations.

However, in an article published by McClatchy Newspapers on March 5, 2007, DOJ's spokesperson, Brian Roehrkas, denied that the conversation between Mr. Elston and Mr. Cummins ever took place (see attached). Indeed, Mr. Roehrkas stated, "It is unfortunate that the press would choose to run an allegation from an anonymous source from a conversation that never took place." (Emphasis added) Given that the call clearly *did* take place, we are left with two possible scenarios: either Mr. Roehrkas intentionally misstated the facts, or someone misled Mr. Roehrkas in order to mislead the public. Neither scenario is acceptable behavior for any employee at the Department of Justice, let alone high-ranking officials. Therefore, I request that the OIG investigate the circumstances leading to Mr. Roehrkas's clearly false statement.

The second issue relates to the narrow "particular case" standard of wrongdoing that high-ranking DOJ officials have adopted during the course of the congressional investigation into the U.S. Attorney removals. That standard was first articulated to the Senate Judiciary Committee on March 29, 2007 by Kyle Sampson, the former Chief of Staff to the Attorney General, when he said:

"The limited category of improper reasons [to dismiss a U.S. Attorney] includes an effort to interfere with or influence the investigation or prosecution of a particular case for political or partisan advantage."

On April 19, 2007, at his testimony before the same Committee, Attorney General Gonzales used almost verbatim language in defending his actions:

"I know that I did not, and would not, ask for a resignation of any individual in order to interfere with or influence a particular prosecution for partisan political gain."

Since then, after the Attorney General testified before the House Judiciary Committee, the Justice Department issued another nearly identical statement:

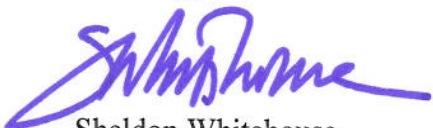
"It is again clear that the Attorney General did not ask for the resignation of any individual in order to interfere with or influence a particular prosecution for partisan political gain."

The notion that the definition of impropriety for DOJ employees should be set so low as to more or less mirror the definition of criminal obstruction of justice is disturbing. Indeed, it implies that it would be perfectly appropriate to dismiss a U.S. Attorney because he or she did not, for example, act in a sufficiently partisan manner, although without regard to a particular case.

I request that you investigate the derivation of this "particular case" standard. Specifically, the public ought to know whether it is based on any internal DOJ guideline or policy, whether it is an ad hoc standard devised by DOJ employees to justify their behavior, whether there is any other explanation for its repeated use, and whether it is an appropriate standard.

I look forward to your response.

Sincerely,



Sheldon Whitehouse
United States Senator